The deceased was apparently a healthy 60 year-old farmer. It will not be unfair to apply a multiplication of 7 years on a loss of dependency of $200 a month to get the amount of 100% for the loss of dependency,30% of which is $4,200/-. 30% of the agreed special damages is $260.70.

The claim against the 1st Defendant should be dismissed with costs. To make the 1st Defendant liable for the negligence of the 2nd Defendant it has to be shown that the driver was with the owner's consent driving the car on the owner's business or for the owner's purposes. In *Ormrod's case*(1) Denning L.J., as he then was, said at page 755,

"The law puts an especial responsibility on the owner of a vehicle who allows it to go on the road in charge of someone else, no matter whether it is his servant, his friends, or anyone else. If it is being used wholly or partly on the owner's business or for the owner's purposes, the owner is liable for any negligence on the part of the driver. The owner only escapes liability when he lends it or hires it to a third person to be used for purposes in which the owner has no interest or concern; see *Hewitt* v. *Bonvin.*"

The 1st Defendant had hired out the motor car to the 2nd Defendant.

There was a bailment of the 1st Defendant's vehicle to the 2nd defendant, the 1st Defendant retaining neither control nor the right to exercise any control over it.

There will be judgment for the Plaintiff against the 2nd Defendant in the sum of $4,460.70 together with costs as taxed at High Court scale. There will be interest on the judgment sum at 8% per annum from date of service of the writ on the 2nd Defendant until date of judgment and thereafter until realisation at 8% per annum.

The claim against the 1st Defendant is dismissed with costs as taxed at High Court scale.

Order accordingly.

Solicitors: *Mahindar & Co.; Skrine & Co.*

TAN CHE SING v. BUKIT SENORANG LUMBER INDUSTRIES SDN. BHD.

[O.C.J. (George J.) November, 1982]
[Kuantan – Civil Suit No. 68 of 1977]

Damages – Hand crushed by motor of conveyor belt – Agreed general and special damages at $10,000 at 100% liability.

The plaintiff was a bark peeling contractor employed by the defendants. His work place was in the peeling section somewhere near the lower end of the conveyor belt. The waste conveyor belt was not functioning due to the accumulation of fallen waste material between the rollers and the belt causing the whole system to be jammed. On seeing the lack of success on the part of D.W.1 and one Roslan to get the belt moving, the plaintiff got up to the motor by walking up the conveyor belt. His intention was to use his hands to tug the "vee" belt that connected the motor to the conveyor belt to free the stuck conveyor belt. As the plaintiff was pulling at the "vee" belt, the motor was switched on by D.W.1. The "vee" belt moved in a clockwise direction and took with it the plaintiff's hand causing it to be crushed.

Held (1) it was highly improbable that D.W.1 could have avoided seeing the plaintiff walk up the conveyor belt. D.W. 1 was therefore negligent in failing to ascertain that the plaintiff was out of harm's way;

(2) the fact that the motor was not fenced is not relevant. The act of the plaintiff pulling at the "vee" belt was a deliberate act and even if there had been a fence or guard he would have done so;

(3) the defendants were vicariously liable for the negligence of the servant D.W.1 to the extent of 60% and the contributory negligence of the plaintiff at 40%;

(4) Agreed quantum was $10,000 for both general and special damage. Judgment for the plaintiff was in the sum of $6,000 and costs.

CIVIL SUIT.

C. Sri Kumar for the plaintiff.
M.C. Ruthrapathy for the defendants.

Cur. Adv. Vult.

George J.: The waste conveyor belt in the Defendant's plywood factory at Batu 3, Jalan Karak, Mentakab was not functioning. This happens from time to time apparently as a result of accumulation of waste falling off the conveyor belt. The accumulation of such fallen waste results in the waste material impeding the movement of the belt on its rollers. Apparently some of the accumulated waste could also get between the rollers and the belt causing the whole system to be jammed.

One end of the conveyor belt was almost at

ground level and the other, some distance away, was some 5 or 6 feet above the ground. Waste material placed on the belt at ground level was conveyed by the moving belt to the other end and presumably drops off at that end from a height of 5 or 6 feet. The small electric motor that drives the conveyor belt is housed on a platform at the same level and alongside the higher end of the conveyor belt. One could get to the motor by climbing up to the platform either by means of a ladder if one places it against the platform or by walking up the conveyor belt. The motor was operated by a switch which was installed on to a pillar near the lower end of the conveyor belt. The switch was some 20 feet from the motor. Apart from the pillar itself there was nothing to obstruct the view between the switch and the motor.

On being told that the conveyor belt had become stuck the Manager of the factory, DW1. accompanied by a Kepala named Roslan attempted to try and release the belt. The mechanic employed by the Defendant had gone out for lunch.

DW1 instructed Roslan to clear the accumulated waste while he manned the switch. When some of the debris had been removed DW1 switched on the motor but the belt did not move. More of the debris was removed but again without success. On the third occasion that DW1 switched on the motor the belt moved. DWI then heard a shout of pain from the top of the conveyor belt where the motor was. The Plaintiff who was there had hurt his hand when the belt moved.

DWI testified that he had not known that the Plaintiff was up there until he heard him shout in pain.

The Plaintiff was a bark peeling contractor employed as such by the Defendant. His work place was in the peeling section somewhere near the lower end of the conveyor belt. On seeing the lack of success on the part of DW1 and Roslan to get the belt moving, he had got up to the motor by walking up the conveyor belt. His intention was to use his hands to tug the "Vee" belt that connected the motor to the conveyor belt, in an anti-clockwise direction that he thought would free the stuck conveyor belt. When the motor was running the "Vee" belt moves in a clockwise direction.

As he was pulling at the "Vee" belt the motor was switched on by DW1 – this obviously was the said third occasion that he did so. The "Vee" belt in moving in a clockwise direction took with it the hand of the Plaintiff causing it to be crushed.

The Plaintiff testified that on seeing DW1 and Roslan trying to free the jammed conveyor belt he had offered his assistance. He testified that he had warned DW1 not to switch on the motor while he tried to free the conveyor belt by means of tugging at the "Vee belt of the motor.

DW1 however denied this. He testified that he had not known of the presence of the Plaintiff until he heard the shout of pain.

That it was dangerous to switch on the motor while the "Vee" belt was being pulled at is obvious.

In the agreed bundle of documents is the record of the investigations into the accident conducted by an inspector of machinery. While I am not concerned with the conclusion arrived at by that official, by putting that document in as an agreed document I am obliged to peruse it. From that document I gather that Roslan had seen the Plaintiff walk up the conveyor belt up to the motor after the first attempt to shift the belt had failed. The photograph at the top of page 7 of the agreed bundle shows a general view of the conveyor belt. On the left in the foreground is seen the switch of the motor on the pillar and in the background the platform for the motor can be seen.

To my mind it seems highly improbable that DWI could have avoided seeing Plaintiff walk up the conveyor belt. While I am prepared to and do accept that the Plaintiff might not have told DW1 what he was going to do at the higher end of the conveyor belt, DW1 had no business switching on the motor without ascertaining that the Plaintiff was out of harm's way. Doing so was negligence. However there was contributory negligence on the part of the Plaintiff in assuming (which is my finding as to what must have happened) that DW1 would realise that he was going to try to free the conveyor belt by pulling out the "Vee" belt.

As I have found that DW1 must have noticed the Plaintiff moving up the belt, the submission that "the Plaintiff had exceeded his invitation" in moving from the peeling section to the conveyor belt has no merit.

The fact that the motor was not fenced is not

relevant. The act of the Plaintiff pulling at the "Vee" belt was a deliberate act and even if there had been a fence or guard he would have done so.

I hold the Defendants vicariously liable for the negligence of their servant DW1 to the extent of 60% and assess the contributory negligence of the Plaintiff at 40%.

Quantum at 100% having been agreed by the parties at $10,000/- for both general and special damages, there will be judgment for the Plaintiff in the sum of $6,000/- and costs.

Order accordingly.

Solicitors: *Sri Ram & Co.; Bahari, Choy & Associates.*

TENGKU ROSLI BIN TENGKU ABDUL HAMID v. TAHIR BIN DAHURI

[O.C.J. (George J.) December 1, 1982]
[Kuantan – Civil Suit No. 283 of 1978]

Damages – Leg shortening, fracture and footdrop – Infant cyclist 50% liable – General damages $15,000 at 50% liability.

Road Traffic – Accident – Motorist to be "on guard and to anticipate" when cyclist is little boy on narrow road

The infant cyclist aged 11 collided with a motorcar as a result of which he suffered the following injuries: fracture of both femur and of the right tibia and fibula, and the severance of the tibialis anterior muscle which had caused a weakness in dorsiflexion of the right foot that gave rise to a moderate degree of footdrop. There was a reduction of girth of the right thigh, weakness of the power of the right leg and a shortening of the right leg of one inch. There was also a complaint of loss of memory. The boy's father on his behalf claimed damages against the defendant.

Held: (1) having regard to the damage to the bicycle and to the motorcar, on the balance of probabilities the court preferred the version that the boy must have swerved into the path of the car rather than the version that the motorist encroached onto the boy's side of the road;

(2) if, as in this case, the cyclist is a little boy and is riding an adult bicycle racing with other boys on a narrow road and is seen to be wobbling, the motorist should be very much on his guard and should anticipate that the boy might swerve into the path of the motorcar. The prudent motorist, in these circumstances, should sound his horn, slown down and move to keep to his extreme left. This, the defendant failed to do;

(3) having regard to the damage to the bicycle and the car on the balance of probabilities the court accepted the version that the boy swerved into the path of the car;

(4) for pain and suffering and loss of amenities arising from the above injuries, the boy was awarded $15,000 at 50% liability. There was no award as to loss of earning capacity as it was too remote and speculative. Agreed special damages awarded at 50% liability was $251.

CIVIL SUIT.

Mahindar Singh for the plaintiff.
Ang Kian Leng for the defendant.

Cur. Adv. Vult.

George J.: In this claim for damages arising from a motor accident involving a motorcar and a cyclist there are two versions of what had happened.

If the Plaintiff's version is to be accepted there has to be a finding that the front of the motorcar at about its front right headlamp came into contact with the right side of the bicycle. The Plaintiff's version was that as he was cycling on his correct side of the road the motorcar coming from the opposite direction in overtaking a motor cyclist had completely got on to its wrong side of the road and had collided with the Plaintiff. The demonstration by the Plaintiff with the use of a toy motorcar and a toy bicycle was to the effect that the front right of the motorcar came into contact with the right side of the bicycle.

If the Defendant's version is to be accepted, the impact to the bicycle has to be either to its front or to its left side. His version was that he was on his correct side of the road and the cyclist had swerved from the cyclist's left to the right and either the front of the bicycle first came into contact with the front right of the car or the left side of the bicycle was hit by the front right portion of the car.

The damage to the motorcar caused by the accident was to the front right headlamp (which shattered), to the front bumper at the right, and to the front number plate which fell off. There was also a large dent on the front right mudguard just above the front right wheel.

To ascertain the damage to the bicycle, I perused the photographs at the top of AB5 and at the top of AB6 with a magnifying glass.